

**FILED**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

JAN 11 2007 *pe*

**JAMES BONINI, Clerk**  
**CINCINNATI, OHIO**

**UNITED STATES OF AMERICA,**

**Plaintiff,**

**vs.**

**KEVIN W. GREGOR,**

**SSN: XXX-XX-7988**

**Defendant,**

**and**

## Potbelly Sandwich Works

**Garnishee.**

)  
)  
)  
)  
) **CASE NO: CR-1-00-83**

**) JUDGE BECKWITH**

## CLERK'S NOTICE OF GARNISHMENT

You are hereby notified that a garnishment of the nonexempt property (including nonexempt disposable earnings) is being taken by the United States of America which has a judgment in Case No. CR-1-00-83 in the United States District Court for the SOUTHERN DISTRICT OF OHIO, WESTERN DIVISION, in the sum of \$34,763.19 plus accrued interest for monies owed the United States. As of December 14, 2006 a balance of \$37,994.75 remains outstanding.

In addition, you are hereby notified that there are exemptions under the law which may protect some of the property from being taken by the Government if Kevin W. Gregor can show that the exemptions apply. Attached to this Notice is a Claim for Exemption Form which summarizes the major exemptions which apply in most situations in the State of Ohio. Pursuant to 28 U.S.C. §3014, an individual debtor may elect to exempt the following property:

**EITHER**

1. Property specified under section 522(d) of Title 11 of the United States Code - the types of property you may elect to exempt under 11 U.S.C. § 522(d) are listed on the attached Claim for Exemption Form;

**OR, IN THE ALTERNATIVE,**

- 2 (A) Any property that is exempt under Federal law (other than the property set forth in paragraph (1) above), or State, or local law, if such law was applicable on the date of filing the Application for Writ of Continuing Garnishment. The applicable law regarding exemptions is the law at the place in which your domicile has been located for 180 days immediately preceding the date of the filing of such application, or for a longer portion of such 180-day period than in any other place. (A list of the property available as an exemption is contained in the attached Claim for Exemption Form); and,
- 2 (B) Any interest in property in which you had, immediately before filing of such application, an interest as a tenant by entirety or joint tenant. If you are electing this type of property, mark the appropriate space on the Claim for Exemption Form.

If you are Kevin W. Gregor , you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the specified exemptions or if you think you do not owe the money to the Government that it says you do.

If you are Kevin W. Gregor , and you want a hearing, you must notify the court within 20 days after receipt of the notice. Your request must be in writing, and either mail it or deliver it in person to the Clerk of the Court at:

Clerk U.S. District Court  
U.S. Postoffice & Courthouse  
Rm #103  
Cincinnati, OH 45202

If you wish, you may request the hearing by checking the appropriate space on the Defendant's Request for Garnishment Hearing form attached to this notice and mailing or delivering your request form to the Clerk of the Court.

You must also send a copy of your request to the government in care of :

Deborah F. Sanders  
Assistant United States Attorney  
Southern District of Ohio  
303 Marconi Boulevard, Suite 200  
Columbus, Ohio 43215-2401

so that the Government will know that you want a hearing. The hearing will take place within 5 days after the Clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

At the hearing you may explain to the judge why you believe the property (including nonexempt disposable earnings) the Government has taken is exempt or why you do not owe the money to the Government.

If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the Clerk of the Court at:

Clerk U.S. District Court  
U.S. Postoffice & Courthouse  
Rm #103  
Cincinnati, OH 45202

You must also send a copy of your request to the Government in care of:

Deborah F. Sanders  
Assistant United States Attorney  
Southern District of Ohio  
303 Marconi Boulevard, Suite 200  
Columbus, Ohio 43215-2401

so that the Government will know that you want the proceedings to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal assistance, or the Clerk of the Court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

**James Bonini, Clerk**

JAMES BONINI, CLERK  
United States District Court



Deputy Clerk

1/11/07

Date

**NOTICE TO DEFENDANT DEBTOR ON**  
**HOW TO CLAIM EXEMPTIONS**

TO: Kevin W. Gregor  
74 Rollingwood Dr  
Mainville, OH 45039

The attached post-judgment process has been issued on request of the United States of America.

The law provides that certain property and wages cannot be taken. Such property is said to be exempted. The Claim for Exemption Form lists the exemptions under Federal law and your state law. There is no exemption solely because you are having difficulty paying your debts.

If you claim an exemption, you should (i) select either the Federal Bankruptcy Code exemptions or the state law exemptions, (ii) fill out the Claim for Exemption Form and (iii) deliver or mail the form to the Clerk's office of this Court and counsel for the United States.

Under the Federal Debt Collection Procedures Act of 1990 (FDCPA), you have the right to request a hearing. You have a right to have the hearing within five (5) business days, or as soon as practicable, from the date you file your claim with the Court.

If the United States of America as creditor is asking that your wages be withheld, the method of computing the amount of wages which are exempt from garnishment by law is indicated on the Claim for Exemption Form, which is attached. If you believe the wrong amount is being withheld, you may file a claim for exemption.

The garnishee, the person who is in custody or control of your property, is required to serve an answer within ten (10) days after receiving a Writ of Continuing Garnishment. Under the FDCPA, within twenty (20) days after receipt of the answer, you may file a written objection to the answer and request a hearing. In your written objection you must state the grounds for the objection and bear the burden of providing the basis of your objection. You must serve a copy of the objection and request for a hearing upon all parties.

If you request a hearing, you should come to court ready to explain why your property is exempt, and you should bring any documents which may help you prove your case. If you do not come to court at the designated time and prove that your property is exempt, you may lose some of your rights. You may wish to seek the advise of an attorney in this matter.

**CLAIM FOR EXEMPTION FORM**  
**MAJOR EXEMPTIONS UNDER FEDERAL LAW**

I claim that the exemption(s) from garnishment which are **checked** below apply in this case:

- \_\_\_\_\_ 1. Social Security benefits and Supplemental Security income (42 U.S.C. § 407).
- \_\_\_\_\_ 2. Veterans' benefits (38 U.S.C. § 5301).
- \_\_\_\_\_ 2a. Members of armed services (10 U.S.C. § 1440, 38 U.S.C. § 1562).
- \_\_\_\_\_ 3. Federal civil service retirement benefits (5 U.S.C. § 8346 and 22 U.S.C. § 4060(c)).
- \_\_\_\_\_ 4. Annuities to survivors of federal judges (28 U.S.C. § 376(n)).
- \_\_\_\_\_ 5. Longshoremen and Harborworkers Compensation Act (33 U.S.C. § 916).
- \_\_\_\_\_ 6. Black lung benefits (30 U.S.C. §§ 931(b)(2)(F) and 932(a)).
- \_\_\_\_\_ 6a. Seaman's, master's or fisherman's wages, except for child support or spousal support and maintenance (46 U.S.C.A. §§ 11108(a)-11109(a-c)).

Exemptions listed under 1 through 6 above may not be applicable in child support and alimony cases (42 U.S.C. § 659).

- \_\_\_\_\_ 6b. Railroad retirement, pension, unemployment benefits (45 U.S.C. §§ 352(e)).
- 7. Bankruptcy Code (Title 11, United States Code) which generally provides exemptions for:
  - (a) \_\_\_\_\_ \$17,425 in equity in a residence.
  - (b) \_\_\_\_\_ \$2,775 in equity in a motor vehicle.
  - (c) \_\_\_\_\_ \$1,150 in jewelry.
  - (d) \_\_\_\_\_ \$9,300 in personal property. (However, no single item worth more than \$450 can be claimed as exempt.)

- (e) \_\_\_\_\_ \$1,750 in equity in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.
- (f) \_\_\_\_\_ \$925 in property, plus up to \$8,725 of any unused amount of the exemption provided for above.
- (g) \_\_\_\_\_ Any unmatured life insurance contract you own, other than credit life insurance.
- (h) \_\_\_\_\_ The aggregate value, up to \$9,300, of any accrued dividend or interest under, or loan value of, any unmatured life insurance contract you own, but only if you are the insured or you are a dependant of the insured.
- (i) \_\_\_\_\_ Professionally prescribed health aids for you or your dependants.
- (j) \_\_\_\_\_ Unemployment compensation benefits, local public assistance benefits, disability benefits, illness benefits; and alimony, support, and separate maintenance, to the extent these items are reasonably necessary for your support or the support of your dependants.
- (k) \_\_\_\_\_ A payment under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for your support or the support of your dependants, subject to the limitations set forth at Title 11 United States Code Section 522(d)(10)(E)(i)-(iii).
- (l) \_\_\_\_\_ Your right to receive, or property that traceable to,  
- an award under a crime victim's reparation law;  
- a payment on account of the wrongful death of an individual of whom you were a dependant, but only to the extent reasonably necessary for your support or the support of your dependants;  
- a payment under a life insurance contract that insured an individual of whom you were a dependant on the date of the insured's death, but only to the extent reasonably necessary for your support or the support of your dependants  
- a payment, not to exceed \$17,425, on account of personal bodily injury suffered by you or by an individual of whom you are a dependant; however, payment for pain and suffering or payment to

compensate actual pecuniary loss are not exempt under this paragraph;  
 - a payment in compensation of loss of your future earnings or the future earnings of an individual of whom you are, or were, a dependant, but only to the extent reasonably necessary for your support of your dependants.

\_\_\_\_8. Compensation for war risk hazards (42 U.S.C. § 1717).

#### MAJOR EXEMPTIONS UNDER STATE LAW

**NOTE:** The law of the state where you have been domiciled for at least 180 days governs your rights.

**NOTE:** If you have selected the Bankruptcy Code exemptions (line 7 above), you may not also claim the state law exemptions listed below.

<u>TYPE</u>	<u>STATUTE EXEMPTION</u>	<u>VALUE CLAIMED</u>
____9. Fraternal Benefit Society Benefits	-Ohio Rev. Code. Ann. §§2329.66(A) (6) (d) and 3921.128	_____
-Exempt before and after payment		
____10. Public Assistance	-Ohio Rev. Stat. §§2329.66(A) (9), 5107.12 and 5113.03(A)	_____
-General Assistance and aid to dependent children are exempt		
____11. Pensions and Retirement Benefits	-Ohio Rev. Stat. §§245.66 and provisions cited is note thereafter, and 2329.66(A) (10)	_____
-Various public employees' retirement systems. In addition, benefits from pension plans qualified for tax exemption and certain non-qualifying plans are exempt. IRA's and Keoughs are exempt when necessary for support.		

- \_\_\_\_\_12. Alimony, Support and Separate Maintenance -Ohio Rev. Code  
Ann. §2329.66(A)  
(11)  
-Alimony, maintenance  
and child support
- \_\_\_\_\_13. Crime Victims' Compensation -Ohio Rev. Code  
Ann. §§2329.66(A)  
(12) (a) and 2743.66(D)  
-Compensation accrued  
in previous 12 months.
- \_\_\_\_\_14. Claims for Negligence and Tortuous Conduct -Ohio Rev. Code  
§2329.66(A) (12)  
(b), (c), and (d)  
-A payment on account  
of the wrongful death of  
an individual of whom the  
person is a dependent to  
the extent necessary for  
support is exempt. Up to  
\$5,000 for personal injury,  
not including pain and  
suffering or pecuniary  
loss, for the person or  
an individual for whom  
the person is a dependent,  
is exempt. Compensation  
for loss of future earnings,  
of the person or an individual  
of whom the person is a dependent,  
is exempt to the extent necessary  
for support.
- \_\_\_\_\_15. Wages -Ohio Rev. Code  
Ann. §2329.66(A)  
(13)  
-If paid weekly,  
the greater of 30  
times the current  
federal minimum wage  
of 75% of debtor's  
disposable earnings.  
If paid biweekly, the  
greater of 60 times  
the current federal  
minimum wage or 75%  
of debtor's disposable  
earnings. If paid  
semi-monthly, the greater  
of 65 times the current  
federal minimum wage or  
75% of debtor's disposable

(Signature of Debtor)

(Date)

**INSTRUCTIONS FOR OBJECTING TO THE ANSWER  
AND OBTAINING A HEARING ON THE OBJECTIONS**

The garnishee, the person who is in custody or control of your property, is required to serve an answer with ten (10) days after receiving a Writ of Continuing Garnishment. Under the FDCPA, within twenty (20) days after receipt of the Answer, you may file a written objection to the answer and request a hearing on the objections. In your written objection you must state the grounds for the objection and bear the burden of proving then basis for your objection. You must serve a copy of the objection and request for a hearing upon all parties.

The hearing will take place within ten (10) days after the date the request is received by the Court or as soon thereafter as practicable. If you request a hearing, you should come to Court ready to explain the basis for your objections and you should bring any documents which may help you prove your case. If you do not come to Court at the designated time and prove your objections, you may lose some of your rights.



TO: Potbelly Sandwich Works  
Attn: Human Resources  
222 Merchandise Mart  
23rd Floor  
Chicago, IL 60654

### **INSTRUCTIONS TO THE GARNISHEE**

Attached is a Writ of Continuing Garnishment requesting that you determine whether or not you have in your possession, custody or control any of the property of the debtor listed herein, or any other property of the debtor. **You are required by law to serve a written answer to this Writ within ten (10) days of your receipt of this Writ.** You must file the original answer with the Court issuing this Writ and serve a copy to Kevin W. Gregor, Defendant, and Deborah F. Sanders, Counsel for the United States. You are further required to withhold and retain any property in which the debtor has a substantial non-exempt interest until the Garnishment Order is signed by this Court and you are instructed regarding payments. A list of exemptions which are not subject to the Writ of Continuing Garnishment is attached to the Clerk's Notice, entitled Claim for Exemption Form.

**IF YOU FAIL TO ANSWER THIS WRIT OR TO WITHHOLD PROPERTY IN ACCORDANCE WITH THE WRIT, THE COURT MAY MAKE YOU LIABLE FOR THAT AMOUNT OF THE DEBTOR'S NON-EXEMPT PROPERTY WHICH YOU FAILED TO WITHHOLD. ADDITIONALLY, YOU MAY BE HELD LIABLE FOR REASONABLE ATTORNEY FEES TO THE UNITED STATES OF AMERICA IF THE UNITED STATES FILES A PETITION TO THE COURT REQUESTING AN EXPLANATION FOR YOUR FAILURE TO COMPLY WITH THIS WRIT.**

If you have additional questions, please call the United States Attorney's Office, Financial Litigation Unit at (614) 469-5715 or write to:

Deborah F. Sanders  
Assistant United States Attorney  
Southern District of Ohio  
303 Marconi Boulevard, Suite 200  
Columbus, Ohio 43215-2401

**IMPORTANT STATEMENT**

This wage garnishment directs the withholdings of up to 25 percent of the judgment debtor's disposable income. In certain cases, however, federal law does not permit the withholding of that much of the debtor's disposable income. The judgment debtor is referred to the 15 United States Code §1671 et. Seq.

**I. Limitations on the amount that can be withheld:**

A. If judgment debtor's weekly disposable earnings are less than thirty (30) times the current federal minimum wage, no deduction can be made under this wage garnishment.

B. If deductions are being made from a judgment debtor's gross income under any orders for alimony, support maintenance for family members or former spouses, and those deductions equal or exceed twenty-five percent (25%) of the judgment debtor's disposable earnings, no deductions can be made under this wage garnishment.

C. If deductions are being made from a judgment debtor's gross income under any orders for alimony, support or maintenance for family members or former spouses, and those deductions are less than twenty-five percent (25%) of the judgment debtor's disposable earnings, deductions may be made under the wage garnishment. However, the amount arrived at by adding the deductions made under this execution to the deduction made under any orders for alimony, support or maintenance for family members or former spouses cannot exceed twenty-five (25%) of the judgment debtor's disposable earnings.

**NOTE:** Nothing in this wage garnishment limits the proportion or amount which may be deducted under any order for alimony, support or maintenance for family members or former spouses.

**II. Explanation of limitations**

**Definitions**

**Disposable Earnings** - Disposable earnings are that part of an individual's earnings left after deducting those amounts that are required by law to be withheld (for example, taxes, social security and unemployment insurance, but not deductions for union dues, insurance plans, etc.).

**Gross Income** - Gross income is salary, wages or other income including any and all overtime earnings, commissions and income trusts, before any deductions are made from such income.

## Garnishee.

[illegible]

**JUDGE BECKWITH**

1. Debtor's pay period is \_\_\_\_\_ weekly, \_\_\_\_\_ bi-weekly, \_\_\_\_\_ semi-monthly, \_\_\_\_\_ monthly. Enter the date the present pay period began. \_\_\_\_\_ ("Present" means the pay period in which this order and notice of garnishment were served) Enter the date the above pay period ends. \_\_\_\_\_

2. The amount of the Debtor's net wages are:

- a) Gross Pay \_\_\_\_\_
- b) Federal Income Tax \_\_\_\_\_
- c) F.I.C.A. Income Tax \_\_\_\_\_
- d) State Income Tax \_\_\_\_\_
- e) Total of tax withholdings \_\_\_\_\_
- f) Net Wages ( total is (a) less total of (e)) \_\_\_\_\_

C. Have there been, or are there currently, other garnishments in effect? (Including, but not limited to, child support and alimony.) \_\_\_\_\_ Yes \_\_\_\_\_ No.

If the answer is yes, describe below.

\_\_\_\_\_  
\_\_\_\_\_

D. In addition to earnings, the Garnishee has custody, control or possession of non-earnings property (such as commissions, bank accounts, stocks, ect.) in which the Debtor maintains an interest. \_\_\_\_\_ Yes \_\_\_\_\_ No (If the answer is yes, describe below)

	<u>Description of Property</u>	<u>Approximate Value</u>	<u>Description of Debtor's Interest in Property</u>
1.	_____	_____	_____
2.	_____	_____	_____
3.	_____	_____	_____
4.	_____	_____	_____

E. Garnishee anticipates owing to the Debtor in the future, the following amounts (non-earnings only):

	<u>Amount</u>	<u>Estimate Date or Period Due</u>
1.	\$ _____	_____
2.	\$ _____	_____
3.	\$ _____	_____
4.	\$ _____	_____

F. Complete items 1 through 3 below, if applicable:

1. The Garnishee makes the following claim of exemption on the part of Debtor as indicated on the Claim for Exemption Form.

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2. The Garnishee has the following objections, defenses or set-offs to Plaintiff's right to apply Garnishee's indebtedness to Debtor upon Plaintiff's claim:

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3. The Garnishee was not and is not indebted or under liability to the Debtor, and the Garnishee did not or does not have in his/her possession or control any property belonging to the Debtor, or in which the Garnishee has an interest; and is not liable as Garnishee in this action for the following reason(s):

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G. The Garnishee delivered or mailed a copy of the original of this Answer by first-class mail

to:

(1) Clerk, U.S. District Court:

Clerk U.S. District Court  
U.S. Postoffice & Courthouse  
Rm #103  
Cincinnati, OH 45202

(2) the Debtor:

Kevin W. Gregor  
74 Rollingwood Dr  
Mainville, OH 45039

(3) the attorney for the United States:

Deborah F. Sanders  
Assistant United States Attorney  
Southern District of Ohio  
303 Marconi Boulevard, Suite 200  
Columbus, Ohio 43215-2401

\_\_\_\_\_  
Garnishee & Telephone Number

Subscribe and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Notary Public

My Commission expires: \_\_\_\_\_

**ATTACHMENT TO ANSWER OF GARNISHEE**

**The Original Answer must be mailed to:**

Clerk U.S. District Court  
U.S. Postoffice & Courthouse  
Rm #103  
Cincinnati, OH 45202

**and a copy of this Answer to:**

Deborah F. Sanders  
Assistant United States Attorney  
Southern District of Ohio  
303 Marconi Boulevard, Suite 200  
Columbus, Ohio 43215-2401

**and a copy of this Answer to the Defendant:**

Kevin W. Gregor  
74 Rollingwood Dr  
Mainville, OH 45039